

1 WILLIAM F. WRAITH, SBN 185927
 WRAITH LAW
 2 24422 Avenida de la Carlota, Suite 400
 Laguna Hills, CA 92653
 3 Tel: (949) 452-1234
 Fax: (949) 452-1102
 4 Attorney for Plaintiff
 5 ENVIRONMENTAL RESEARCH CENTER, INC.

FILED BY FAX
 ALAMEDA COUNTY

February 22, 2016

CLERK OF
 THE SUPERIOR COURT
 By Burt Moskaira, Deputy

CASE NUMBER:

RG15787548

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 8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
 9 **COUNTY OF ALAMEDA**

10 ENVIRONMENTAL RESEARCH CENTER,
 11 INC., a non-profit California corporation,

Case No. RG15787548

12 Plaintiff,

**FIRST AMENDED COMPLAINT FOR
 INJUNCTIVE RELIEF AND CIVIL
 PENALTIES**

13 v.

14 NUTREX RESEARCH, INC. and DOES 1-25,
 Inclusive,

Health & Safety Code §25249.5, *et seq.*

15 Defendants.

16
 17
 18 Plaintiff Environmental Research Center, Inc. ("PLAINTIFF" or "ERC") brings this
 19 action in the interests of the general public and, on information and belief, hereby alleges:

20 **INTRODUCTION**

21 1. This action seeks to remedy the continuing failure of Defendants NUTREX
 22 RESEARCH, INC. and DOES 1-25 (collectively referred to as "NUTREX") to warn
 23 consumers in California that they are being exposed to lead, a substance known to the State of
 24 California to cause cancer, birth defects, and other reproductive harm. NUTREX
 25 manufactures, packages, distributes, markets, and/or sells in California the following products
 26 containing lead (collectively, the "PRODUCTS"):

- a) Nutrex Research Inc. Muscle Infusion Chocolate Banana Crunch
- b) Nutrex Research Inc. Muscle Infusion Chocolate
- c) Nutrex Research Inc. Muscle Infusion Chocolate Peanut Butter Crunch
- d) Nutrex Research Inc. Muscle Infusion Vanilla

2. Lead (hereinafter, the “LISTED CHEMICAL”) is a substance known to the State¹ of California to cause cancer, birth defects, and other reproductive harm.

3. The use and/or handling of the PRODUCTS causes exposures to the LISTED CHEMICAL at levels requiring a “clear and reasonable warning” under California's Safe Drinking Water and Toxic Enforcement Act of 1986, Health & Safety Code (“H&S Code”) §25249.5, *et seq.* (also known as “Proposition 65”). NUTREX has failed to provide the health hazard warnings required by Proposition 65.

4. NUTREX’s past sales and continued manufacturing, packaging, distributing, marketing and/or sales of the PRODUCTS without the required health hazard warnings, cause individuals to be involuntarily and unwittingly exposed to levels of the LISTED CHEMICAL that violate Proposition 65.

5. PLAINTIFF seeks injunctive relief enjoining NUTREX from the continued manufacturing, packaging, distributing, marketing and/or sales of the PRODUCTS in California without provision of clear and reasonable warnings regarding the risks of cancer, birth defects, and other reproductive harm posed by exposure to the LISTED CHEMICAL through the use and/or handling of the PRODUCTS. PLAINTIFF seeks an injunctive order compelling NUTREX to bring its business practices into compliance with Proposition 65 by providing a clear and reasonable warning to each individual who has been and who in the future may be exposed to the LISTED CHEMICAL from the use of the PRODUCTS. PLAINTIFF also seeks an order compelling NUTREX to identify and locate each individual

¹ All statutory and regulatory references herein are to California law, unless otherwise specified.

1 person who in the past has purchased the PRODUCTS, and to provide to each such purchaser a
2 clear and reasonable warning that the use of the PRODUCTS will cause exposures to the
3 LISTED CHEMICAL.

4 6. In addition to injunctive relief, PLAINTIFF seeks an assessment of civil
5 penalties up to the maximum civil penalty of \$2,500 per day per exposure authorized by
6 Proposition 65 to remedy NUTREX's failure to provide clear and reasonable warnings
7 regarding exposures to the LISTED CHEMICAL.

8 **JURISDICTION AND VENUE**

9 7. This Court has jurisdiction over this action pursuant to California Constitution
10 Article VI, Section 10, which grants the Superior Court "original jurisdiction in all causes
11 except those given by statute to other trial courts." The statute under which this action is
12 brought does not specify any other basis for jurisdiction.

13 8. This Court has jurisdiction over NUTREX because, based on information and
14 belief, NUTREX is a business having sufficient minimum contacts with California, or
15 otherwise intentionally availing itself of the California market through the distribution and sale
16 of the PRODUCTS in the State of California to render the exercise of jurisdiction over it by the
17 California courts consistent with traditional notions of fair play and substantial justice.

18 9. Venue in this action is proper in the Alameda Superior Court because NUTREX
19 has violated California law in the County of Alameda.

20 **PARTIES**

21 10. PLAINTIFF is a non-profit corporation organized under California's
22 Corporation Law. ERC is dedicated to, among other causes, reducing the use and misuse of
23 hazardous and toxic substances, consumer protection, worker safety, and corporate
24 responsibility.

25 11. ERC is a person within the meaning of H&S Code §25118 and brings this
26 enforcement action in the public interest pursuant to H&S Code §25249.7(d).

1 reasonable” warning requirements of Proposition 65 beginning on October 1, 1993 (27 CCR §
2 25000, *et seq.*; H&S Code §25249.6 *et seq.*). Due to the carcinogenicity of lead, the no
3 significant risk level for lead is 15 ug/day (micrograms a day). (27 CCR § 25705(b)(1).)

4 22. On June 15, 2015 and November 5, 2015, PLAINTIFF sent separate 60-Day
5 Notices of Proposition 65 (“Notices”) violations to the requisite public enforcement agencies,
6 and to NUTREX. The Notices were issued pursuant to, and in compliance with, the
7 requirements of H&S Code §25249.7(d) and the statute's implementing regulations regarding
8 the notice of the violations to be given to certain public enforcement agencies and to the
9 violators. A true and correct copy of the June 15, 2015 60-Day Notice is attached hereto as
10 **Exhibit A**, a true and correct copy of the November 5, 2015 60-Day Notice is attached hereto
11 as **Exhibit B**, and each is incorporated herein by reference. Each Notice was issued as follows:

- 12 a. NUTREX and the California Attorney General were provided copies of the
13 Notices of Violations, along with a Certificate of Merit by the attorney for
14 the noticing party stating that there is a reasonable and meritorious cause for
15 this action. The requisite county district attorneys and city attorneys were
16 provided copies of the Notices of Violations and Certificates of Merit.
- 17 b. NUTREX was provided, with the Notices of Violations, a copy of a
18 document entitled “The Safe Drinking Water and Toxic Enforcement Act of
19 1986 (Proposition 65): A Summary,” which is also known as Appendix A to
20 Title 27 of CCR § 25903.
- 21 c. The California Attorney General was provided, with the Notices of
22 Violations, additional factual information sufficient to establish a basis for
23 the Certificates of Merit, including the identity of the persons consulted with
24 and relied on by the certifier, and the facts, studies, or other data reviewed
25 by those persons, pursuant to H&S Code §§25249.7(d)(1) and
26 25249.7(h)(2).

1 23. At least 60-days have elapsed since PLAINTIFF sent the Notices to NUTREX.
2 The appropriate public enforcement agencies have failed to commence and diligently prosecute
3 a cause of action under H&S Code §25249.5, *et seq.* against NUTREX based on the allegations
4 herein.

5 24. Plaintiff is informed and believes, and based on such information and
6 belief, alleges the PRODUCTS have been marketed, distributed, and/or sold to
7 individuals in California allegedly been sold by NUTREX for use in California without
8 the requisite clear and reasonable warnings before, on, and after June 15, 2012. The
9 PRODUCTS continue to be distributed and sold in California without the requisite
10 warning information.

11 25. As a proximate result of acts by NUTREX, as a person in the course of doing
12 business within the meaning of H&S Code §25249.11(b), individuals throughout the State of
13 California, including in the County of Alameda, have been exposed to lead without clear and
14 reasonable warnings. The individuals subject to exposures to lead include normal and
15 foreseeable users of the PRODUCTS, as well as all other persons exposed to the PRODUCTS.

16 26. At all times relevant to this action, NUTREX has knowingly and intentionally
17 exposed the users and/or handlers of the PRODUCTS to lead without first giving clear and
18 reasonable warnings to such individuals.

19 27. Individuals using or handling the PRODUCTS are exposed to lead in excess of
20 the “maximum allowable daily” and “no significant risk” levels determined by the State of
21 California, as applicable.

22 28. At all times relevant to this action, each Defendant has, in the course of doing
23 business, failed to provide individuals using and/or handling the PRODUCTS with a clear and
24 reasonable warning that the PRODUCTS exposure individuals to lead.

25 29. The PRODUCTS continue to be marketed, distributed, and/or sold in California
26 without the requisite clear and reasonable warnings.

1 ///

2 **FIRST CAUSE OF ACTION**

3 **(Injunctive Relief for Violations of Health and Safety Code § 25249.5, *et seq.* concerning**
4 **the PRODUCTS described in the June 15, 2015, Prop. 65 Notice)**

4 **Against NUTREX**

5 30. PLAINTIFF re-alleges and incorporates by reference each and every
6 preceding allegation and paragraph as though fully set forth in this cause of action.

7 31. By committing the acts alleged in this Complaint, NUTREX, at all times
8 relevant to this action, and continuing through the present, has violated H&S Code §25249.6
9 by, in the course of doing business, knowingly and intentionally exposing individuals who use
10 or handle the PRODUCTS set forth in the Notice to the LISTED CHEMICAL, without first
11 providing a clear and reasonable warning to such individuals pursuant to H&S Code §§
12 25249.6 and 25249.11(f).

13 32. By the above-described acts, NUTREX has violated H&S Code § 25249.6 and is
14 therefore subject to an injunction ordering NUTREX to stop violating Proposition 65, to
15 provide warnings to all present and future customers, and to provide warnings to NUTREX's
16 past customers who purchased or used the PRODUCTS without receiving a clear and
17 reasonable warning.

18 33. An action for injunctive relief under Proposition 65 is specifically authorized by
19 Health & Safety Code §25249.7(a).

20 34. Continuing commission by NUTREX of the acts alleged above will irreparably
21 harm the citizens of the State of California, for which harm they have no plain, speedy, or
22 adequate remedy at law.

23 35. Wherefore, PLAINTIFF prays for judgment against NUTREX, as set forth
24 hereafter.

1 A. A preliminary and permanent injunction, pursuant to H&S Code §25249.7(b),
2 enjoining NUTREX, its agents, employees, assigns and all persons acting in concert or
3 participating with NUTREX, from distributing or selling the PRODUCTS in California without
4 first providing a clear and reasonable warning, within the meaning of Proposition 65, that the
5 users and/or handlers of the PRODUCTS are exposed to the LISTED CHEMICAL;

6 B. an injunctive order, pursuant to H&S Code §25249.7(b), compelling
7 DEFENDANTS to identify and locate each individual who has purchased the PRODUCTS
8 since June 15, 2012, and to provide a warning to such person that the use of the PRODUCTS
9 will expose the user to chemicals known to birth defects and other reproductive harm;

10 C. An assessment of civil penalties pursuant to Health & Safety Code §25249.7(b),
11 against NUTREX in the amount of \$2,500 per day for each violation of Proposition 65;

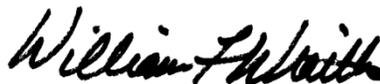
12 D. An award to PLAINTIFF of its reasonable attorney's fees and costs pursuant to
13 California Code of Civil Procedure §1021.5 or the substantial benefit theory;

14 E. An award of costs of suit herein; and

15 F. Such other and further relief as may be just and proper.

16
17 Dated: February 17, 2016

WRAITH LAW

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By: _____

20 WILLIAM F. WRAITH
21 Attorney for Plaintiff
22 Environmental Research
23 Center
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EXHIBIT A

WRAITH LAW
24422 AVENIDA DE LA CARLOTA
SUITE 400
LAGUNA HILLS, CA 92653
Tel (949) 452-1234
Fax (949) 452-1102

June 15, 2015

**NOTICE OF VIOLATIONS OF
CALIFORNIA HEALTH & SAFETY CODE SECTION 25249.5 ET SEQ.
(PROPOSITION 65)**

Dear Alleged Violator and the Appropriate Public Enforcement Agencies:

I represent Environmental Research Center, Inc. ("ERC"), 3111 Camino Del Rio North, Suite 400, San Diego, CA 92108; Tel. (619) 500-3090. ERC's Executive Director is Chris Heptinstall. ERC is a California non-profit corporation dedicated to, among other causes, helping safeguard the public from health hazards by bringing about a reduction in the use and misuse of hazardous and toxic chemicals, facilitating a safe environment for consumers and employees, and encouraging corporate responsibility.

ERC has identified violations of California's Safe Drinking Water and Toxic Enforcement Act of 1986 ("Proposition 65"), which is codified at California Health & Safety Code §25249.5 *et seq.*, with respect to the products identified below. These violations have occurred and continue to occur because the alleged Violator identified below failed to provide required clear and reasonable warnings with these products. This letter serves as a notice of these violations to the alleged Violator and the appropriate public enforcement agencies. Pursuant to Section 25249.7(d) of the statute, ERC intends to file a private enforcement action in the public interest 60 days after effective service of this notice unless the public enforcement agencies have commenced and are diligently prosecuting an action to rectify these violations.

General Information about Proposition 65. A copy of a summary of Proposition 65, prepared by the Office of Environmental Health Hazard Assessment, is attached with the copy of this letter served to the alleged Violator identified below.

Alleged Violator. The name of the company covered by this notice that violated Proposition 65 (hereinafter the "Violator") is:

Nutrex Research, Inc.

Consumer Products and Listed Chemical. The products that are the subject of this notice and the chemical in those products identified as exceeding allowable levels are:

Nutrex Research Inc. Muscle Infusion Chocolate Banana Crunch - Lead
Nutrex Research Inc. Muscle Infusion Chocolate - Lead
Nutrex Research Inc. Muscle Infusion Chocolate Peanut Butter Crunch – Lead

On February 27, 1987, the State of California officially listed lead as a chemical known to cause developmental toxicity, and male and female reproductive toxicity. On October 1, 1992, the State of California officially listed lead and lead compounds as chemicals known to cause cancer.

It should be noted that ERC may continue to investigate other products that may reveal further violations and result in subsequent notices of violations.

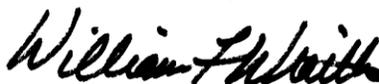
Route of Exposure. The consumer exposures that are the subject of this notice result from the purchase, acquisition, handling and recommended use of these products. Consequently, the primary route of exposure to this chemical has been and continues to be through ingestion, but may have also occurred and may continue to occur through inhalation and/or dermal contact.

Approximate Time Period of Violations. Ongoing violations have occurred every day since at least June 15, 2012, as well as every day since the products were introduced into the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users or until this known toxic chemical is either removed from or reduced to allowable levels in the products. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to the identified chemical. The method of warning should be a warning that appears on the product label. The Violator violated Proposition 65 because it failed to provide persons handling and/or using these products with appropriate warnings that they are being exposed to this chemical.

Consistent with the public interest goals of Proposition 65 and a desire to have these ongoing violations of California law quickly rectified, ERC is interested in seeking a constructive resolution of this matter that includes an enforceable written agreement by the Violator to: (1) reformulate the identified products so as to eliminate further exposures to the identified chemical, or provide appropriate warnings on the labels of these products; (2) pay an appropriate civil penalty; and (3) provide clear and reasonable warnings compliant with Proposition 65 to all persons located in California who purchased the above products in the last three years. Such a resolution will prevent further unwarned consumer exposures to the identified chemical, as well as an expensive and time consuming litigation.

ERC has retained me as legal counsel in connection with this matter. **Please direct all communications regarding this Notice of Violations to my attention at the law office address and telephone number indicated on the letterhead.**

Sincerely,



William F. Wraith

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to Nutrex Research, Inc. and its Registered Agent for Service of Process only)

Additional Supporting Information for Certificate of Merit (to AG only)

CERTIFICATE OF MERIT

**Re: Environmental Research Center, Inc.'s Notice of Proposition 65 Violations by
Nutrex Research, Inc.**

I, William F. Wraith, declare:

1. This Certificate of Merit accompanies the attached 60-day notice in which it is alleged the party identified in the notice violated California Health & Safety Code Section 25249.6 by failing to provide clear and reasonable warnings.

2. I am an attorney for the noticing party.

3. I have consulted with one or more persons with relevant and appropriate experience or expertise who have reviewed facts, studies, or other data regarding the exposure to the listed chemical that is the subject of the notice.

4. Based on the information obtained through those consultants, and on other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that "reasonable and meritorious case for the private action" means that the information provides a credible basis that all elements of the plaintiff's case can be established and that the information did not prove that the alleged Violator will be able to establish any of the affirmative defenses set forth in the statute.

5. Along with the copy of this Certificate of Merit served on the Attorney General is attached additional factual information sufficient to establish the basis for this certificate, including the information identified in California Health & Safety Code §25249.7(h)(2), i.e., (1) the identity of the persons consulted with and relied on by the certifier, and (2) the facts, studies, or other data reviewed by those persons.

Dated: June 15, 2015



William F. Wraith

CERTIFICATE OF SERVICE

I, the undersigned, declare under penalty of perjury under the laws of the State of California that the following is true and correct:

I am a citizen of the United States, over the age of 18 years of age, and am not a party to the within entitled action. My business address is 306 Joy Street, Fort Oglethorpe, Georgia 30742. I am a resident or employed in the county where the mailing occurred. The envelope or package was placed in the mail at Fort Oglethorpe, Georgia.

On June 15, 2015, I served the following documents: **NOTICE OF VIOLATIONS OF CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; "THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY"** on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to the party listed below and depositing it at a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Current President or CEO
Nutrex Research, Inc.
579 South Econ Circle
Oviedo, FL 32765

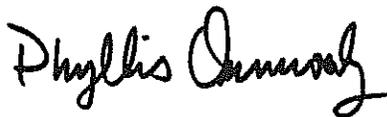
Jens Ingenohl
(Registered Agent for Nutrex Research, Inc.)
579 South Econ Circle
Oviedo, FL 32765

On June 15, 2015, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; ADDITIONAL SUPPORTING INFORMATION FOR CERTIFICATE OF MERIT AS REQUIRED BY CALIFORNIA HEALTH & SAFETY CODE §25249.7(d)(1)** were served on the following party when a true and correct copy thereof was uploaded on the California Attorney General's website, which can be accessed at <https://oag.ca.gov/prop65/add-60-day-notice>:

Office of the California Attorney General
Prop 65 Enforcement Reporting
1515 Clay Street, Suite 2000
Oakland, CA 94612-0550

On June 15, 2015, I served the following documents: **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** on each of the parties on the Service List attached hereto by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties on the Service List attached hereto, and depositing it at a U.S. Postal Service Office with the postage fully prepaid for delivery by Priority Mail.

Executed on June 15, 2015, in Fort Oglethorpe, Georgia.



Phyllis Dunwoody

Notice of Violations of California Health & Safety Code §25249.5 *et seq.*

June 15, 2015

Page 5

Service List

District Attorney, Alameda County
1225 Fallon Street, Suite 900
Oakland, CA 94612

District Attorney, Los Angeles County
210 West Temple Street, Suite 18000
Los Angeles, CA 90012

District Attorney, San Diego County
330 West Broadway, Suite 1300
San Diego, CA 92101

District Attorney, Tuolumne County
423 N. Washington Street
Sonora, CA 95370

District Attorney, Alpine County
P.O. Box 248
Markleeville, CA 96120

District Attorney, Madera County
209 West Yosemite Avenue
Madera, CA 93637

District Attorney, San Francisco County
850 Bryant Street, Suite 322
San Francisco, CA 94103

District Attorney, Ventura County
800 South Victoria Ave, Suite 314
Ventura, CA 93009

District Attorney, Amador County
708 Court Street
Jackson, CA 95642

District Attorney, Marin County
3501 Civic Center Drive, Room 130
San Rafael, CA 94903

District Attorney, San Joaquin County
222 E. Weber Ave. Rm. 202
Stockton, CA 95202

District Attorney, Yolo County
301 2nd Street
Woodland, CA 95695

District Attorney, Butte County
25 County Center Drive, Suite 245
Oroville, CA 95965

District Attorney, Mariposa County
29 Post Office Box 370
Mariposa, CA 95338

District Attorney, San Luis Obispo County
1035 Palm St, Room 450
San Luis Obispo, CA 93408

District Attorney, Yuba County
215 Fifth Street, Suite 152
Marysville, CA 95901

District Attorney, Calaveras County
891 Mountain Ranch Road
San Andreas, CA 95249

District Attorney, Mendocino County
Post Office Box 1000
Ukiah, CA 95482

District Attorney, San Mateo County
400 County Ctr., 3rd Floor
Redwood City, CA 94063

Los Angeles City Attorney's Office
City Hall East
200 N. Main Street, Suite 800
Los Angeles, CA 90012

District Attorney, Colusa County
346 Fifth Street Suite 101
Colusa, CA 95932

District Attorney, Merced County
550 W. Main Street
Merced, CA 95340

District Attorney, Santa Barbara County
1112 Santa Barbara Street
Santa Barbara, CA 93101

San Diego City Attorney's Office
1200 3rd Avenue, Ste 1620
San Diego, CA 92101

District Attorney, Contra Costa County
900 Ward Street
Martinez, CA 94553

District Attorney, Modoc County
204 S Court Street, Room 202
Alturas, CA 96101-4020

District Attorney, Santa Clara County
70 West Hedding Street
San Jose, CA 95110

San Francisco, City Attorney
City Hall, Room 234
1 Dr Carlton B Goodlett PL
San Francisco, CA 94102

District Attorney, Del Norte County
450 H Street, Room 171
Crescent City, CA 95531

District Attorney, Mono County
Post Office Box 617
Bridgeport, CA 93517

District Attorney, Santa Cruz County
701 Ocean Street, Room 200
Santa Cruz, CA 95060

San Jose City Attorney's Office
200 East Santa Clara Street,
16th Floor
San Jose, CA 95113

District Attorney, El Dorado County
515 Main Street
Placerville, CA 95667

District Attorney, Monterey County
Post Office Box 1131
Salinas, CA 93902

District Attorney, Shasta County
1355 West Street
Redding, CA 96001

District Attorney, Fresno County
2220 Tulare Street, Suite 1000
Fresno, CA 93721

District Attorney, Napa County
931 Parkway Mall
Napa, CA 94559

District Attorney, Sierra County
PO Box 457
Downieville, CA 95936

District Attorney, Glenn County
Post Office Box 430
Willows, CA 95988

District Attorney, Nevada County
201 Commercial Street
Nevada City, CA 95959

District Attorney, Siskiyou County
Post Office Box 986
Yreka, CA 96097

District Attorney, Humboldt County
825 5th Street 4th Floor
Eureka, CA 95501

District Attorney, Orange County
401 West Civic Center Drive
Santa Ana, CA 92701

District Attorney, Solano County
675 Texas Street, Ste 4500
Fairfield, CA 94533

District Attorney, Imperial County
940 West Main Street, Ste 102
El Centro, CA 92243

District Attorney, Placer County
10810 Justice Center Drive, Ste 240
Roseville, CA 95678

District Attorney, Sonoma County
600 Administration Drive,
Room 212J
Santa Rosa, CA 95403

District Attorney, Inyo County
230 W. Line Street
Bishop, CA 93514

District Attorney, Plumas County
520 Main Street, Room 404
Quincy, CA 95971

District Attorney, Stanislaus County
832 12th Street, Ste 300
Modesto, CA 95354

District Attorney, Kern County
1215 Truxtun Avenue
Bakersfield, CA 93301

District Attorney, Riverside County
3960 Orange Street
Riverside, CA 92501

District Attorney, Sutter County
446 Second Street
Yuba City, CA 95991

District Attorney, Kings County
1400 West Lacey Boulevard
Hanford, CA 93230

District Attorney, Sacramento County
901 "G" Street
Sacramento, CA 95814

District Attorney, Tehama County
Post Office Box 519
Red Bluff, CA 96080

District Attorney, Lake County
255 N. Forbes Street
Lakeport, CA 95453

District Attorney, San Benito County
419 Fourth Street, 2nd Floor
Hollister, CA 95023

District Attorney, Trinity County
Post Office Box 310
Weaverville, CA 96093

District Attorney, Lassen County
220 South Lassen Street, Ste. 8
Susanville, CA 96130

District Attorney, San Bernardino County
316 N. Mountain View Avenue
San Bernardino, CA 92415-0004

District Attorney, Tulare County
221 S. Mooney Blvd., Room 224
Visalia, CA 93291

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EXHIBIT B

WRAITH LAW
24422 AVENIDA DE LA CARLOTA
SUITE 400
LAGUNA HILLS, CA 92653
Tel (949) 452-1234
Fax (949) 452-1102

November 5, 2015

**NOTICE OF VIOLATIONS OF
CALIFORNIA HEALTH & SAFETY CODE SECTION 25249.5 ET SEQ.
(PROPOSITION 65)**

Dear Alleged Violator and the Appropriate Public Enforcement Agencies:

I represent Environmental Research Center, Inc. ("ERC"), 3111 Camino Del Rio North, Suite 400, San Diego, CA 92108; Tel. (619) 500-3090. ERC's Executive Director is Chris Heptinstall. ERC is a California non-profit corporation dedicated to, among other causes, helping safeguard the public from health hazards by bringing about a reduction in the use and misuse of hazardous and toxic chemicals, facilitating a safe environment for consumers and employees, and encouraging corporate responsibility.

ERC has identified violations of California's Safe Drinking Water and Toxic Enforcement Act of 1986 ("Proposition 65"), which is codified at California Health & Safety Code §25249.5 *et seq.*, with respect to the product identified below. These violations have occurred and continue to occur because the alleged Violator identified below failed to provide required clear and reasonable warnings with this product. This letter serves as a notice of these violations to the alleged Violator and the appropriate public enforcement agencies. Pursuant to Section 25249.7(d) of the statute, ERC intends to file a private enforcement action in the public interest 60 days after effective service of this notice unless the public enforcement agencies have commenced and are diligently prosecuting an action to rectify these violations.

General Information about Proposition 65. A copy of a summary of Proposition 65, prepared by the Office of Environmental Health Hazard Assessment, is attached with the copy of this letter served to the alleged Violator identified below.

Alleged Violator. The name of the company covered by this notice that violated Proposition 65 (hereinafter the "Violator") is:

Nutrex Research, Inc.

Consumer Product and Listed Chemical. The product that is the subject of this notice and the chemical in that product identified as exceeding allowable levels are:

Nutrex Research Inc. Muscle Infusion Vanilla - Lead

On February 27, 1987, the State of California officially listed lead as a chemical known to cause developmental toxicity, and male and female reproductive toxicity. On October 1, 1992,

the State of California officially listed lead and lead compounds as chemicals known to cause cancer.

It should be noted that ERC may continue to investigate other products that may reveal further violations and result in subsequent notices of violations.

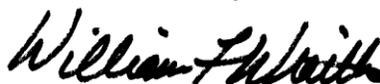
Route of Exposure. The consumer exposures that are the subject of this notice result from the purchase, acquisition, handling and recommended use of this product. Consequently, the primary route of exposure to this chemical has been and continues to be through ingestion, but may have also occurred and may continue to occur through inhalation and/or dermal contact.

Approximate Time Period of Violations. Ongoing violations have occurred every day since at least November 5, 2012, as well as every day since the product was introduced into the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users or until this known toxic chemical is either removed from or reduced to allowable levels in the product. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to the identified chemical. The method of warning should be a warning that appears on the product label. The Violator violated Proposition 65 because it failed to provide persons handling and/or using this product with appropriate warnings that they are being exposed to this chemical.

Consistent with the public interest goals of Proposition 65 and a desire to have these ongoing violations of California law quickly rectified, ERC is interested in seeking a constructive resolution of this matter that includes an enforceable written agreement by the Violator to: (1) reformulate the identified product so as to eliminate further exposures to the identified chemical, or provide appropriate warnings on the labels of this product; (2) pay an appropriate civil penalty; and (3) provide clear and reasonable warnings compliant with Proposition 65 to all persons located in California who purchased the above product in the last three years. Such a resolution will prevent further unwarned consumer exposures to the identified chemical, as well as an expensive and time consuming litigation.

ERC has retained me as legal counsel in connection with this matter. **Please direct all communications regarding this Notice of Violations to my attention at the law office address and telephone number indicated on the letterhead.**

Sincerely,



William F. Wraith

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to Nutrex Research, Inc. and its Registered Agent for Service of Process only)

Additional Supporting Information for Certificate of Merit (to AG only)

CERTIFICATE OF MERIT

Re: Environmental Research Center, Inc.’s Notice of Proposition 65 Violations by Nutrex Research, Inc.

I, William F. Wraith, declare:

1. This Certificate of Merit accompanies the attached 60-day notice in which it is alleged the party identified in the notice violated California Health & Safety Code Section 25249.6 by failing to provide clear and reasonable warnings.

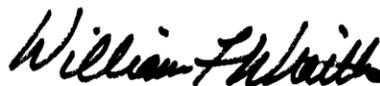
2. I am an attorney for the noticing party.

3. I have consulted with one or more persons with relevant and appropriate experience or expertise who have reviewed facts, studies, or other data regarding the exposure to the listed chemical that is the subject of the notice.

4. Based on the information obtained through those consultants, and on other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that “reasonable and meritorious case for the private action” means that the information provides a credible basis that all elements of the plaintiff’s case can be established and that the information did not prove that the alleged Violator will be able to establish any of the affirmative defenses set forth in the statute.

5. Along with the copy of this Certificate of Merit served on the Attorney General is attached additional factual information sufficient to establish the basis for this certificate, including the information identified in California Health & Safety Code §25249.7(h)(2), i.e., (1) the identity of the persons consulted with and relied on by the certifier, and (2) the facts, studies, or other data reviewed by those persons.

Dated: November 5, 2015



William F. Wraith

CERTIFICATE OF SERVICE

I, the undersigned, declare under penalty of perjury under the laws of the State of California that the following is true and correct:

I am a citizen of the United States, over the age of 18 years of age, and am not a party to the within entitled action. My business address is 306 Joy Street, Fort Oglethorpe, Georgia 30742. I am a resident or employed in the county where the mailing occurred. The envelope or package was placed in the mail at Fort Oglethorpe, Georgia.

On November 5, 2015, I served the following documents: **NOTICE OF VIOLATIONS OF CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; "THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY"** on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to the party listed below and depositing it at a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Current President or CEO
Nutrex Research, Inc.
579 South Econ Circle
Oviedo, FL 32765

Jens O. Ingenohl
(Registered Agent for Nutrex Research,
Inc.)
579 South Econ Circle
Oviedo, FL 32765

On November 5, 2015, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; ADDITIONAL SUPPORTING INFORMATION FOR CERTIFICATE OF MERIT AS REQUIRED BY CALIFORNIA HEALTH & SAFETY CODE §25249.7(d)(1)** were served on the following party when a true and correct copy thereof was uploaded on the California Attorney General's website, which can be accessed at <https://oag.ca.gov/prop65/add-60-day-notice> :

Office of the California Attorney General
Prop 65 Enforcement Reporting
1515 Clay Street, Suite 2000
Oakland, CA 94612-0550

On November 5, 2015, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** were served on the following party when a true and correct copy thereof was sent via electronic mail to the party listed below:

Yolo County District Attorney
301 2nd Street
Woodland, CA 95695
cfepd@yolocounty.org

On November 5, 2015, I served the following documents: **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** on each of the parties on the Service List attached hereto by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties on the Service List attached hereto, and depositing it at a U.S. Postal Service Office with the postage fully prepaid for delivery by Priority Mail.

Executed on November 5, 2015, in Fort Oglethorpe, Georgia.



Phyllis Dunwoody

Service List

District Attorney, Alameda County
1225 Fallon Street, Suite 900
Oakland, CA 94612

District Attorney, Alpine County
P.O. Box 248
Markleeville, CA 96120

District Attorney, Amador County
708 Court Street
Jackson, CA 95642

District Attorney, Butte County
25 County Center Drive, Suite 245
Oroville, CA 95965

District Attorney, Calaveras County
891 Mountain Ranch Road
San Andreas, CA 95249

District Attorney, Colusa County
346 Fifth Street Suite 101
Colusa, CA 95932

District Attorney, Contra Costa County
900 Ward Street
Martinez, CA 94553

District Attorney, Del Norte County
450 H Street, Room 171
Crescent City, CA 95531

District Attorney, El Dorado County
515 Main Street
Placerville, CA 95667

District Attorney, Fresno County
2220 Tulare Street, Suite 1000
Fresno, CA 93721

District Attorney, Glenn County
Post Office Box 430
Willows, CA 95988

District Attorney, Humboldt County
825 5th Street 4th Floor
Eureka, CA 95501

District Attorney, Imperial County
940 West Main Street, Ste 102
El Centro, CA 92243

District Attorney, Inyo County
230 W. Line Street
Bishop, CA 93514

District Attorney, Kern County
1215 Truxtun Avenue
Bakersfield, CA 93301

District Attorney, Kings County
1400 West Lacey Boulevard
Hanford, CA 93230

District Attorney, Lake County
255 N. Forbes Street
Lakeport, CA 95453

District Attorney, Lassen County
220 South Lassen Street, Ste. 8
Susanville, CA 96130

District Attorney, Los Angeles County
210 West Temple Street, Suite 18000
Los Angeles, CA 90012

District Attorney, Madera County
209 West Yosemite Avenue
Madera, CA 93637

District Attorney, Marin County
3501 Civic Center Drive, Room 130
San Rafael, CA 94903

District Attorney, Mariposa County
Post Office Box 730
Mariposa, CA 95338

District Attorney, Mendocino County
Post Office Box 1000
Ukiah, CA 95482

District Attorney, Merced County
550 W. Main Street
Merced, CA 95340

District Attorney, Modoc County
204 S Court Street, Room 202
Alturas, CA 96101-4020

District Attorney, Mono County
Post Office Box 617
Bridgeport, CA 93517

District Attorney, Monterey County
Post Office Box 1131
Salinas, CA 93902

District Attorney, Napa County
931 Parkway Mall
Napa, CA 94559

District Attorney, Nevada County
201 Commercial Street
Nevada City, CA 95959

District Attorney, Orange County
401 West Civic Center Drive
Santa Ana, CA 92701

District Attorney, Placer County
10810 Justice Center Drive, Ste 240
Roseville, CA 95678

District Attorney, Plumas County
520 Main Street, Room 404
Quincy, CA 95971

District Attorney, Riverside County
3960 Orange Street
Riverside, CA 92501

District Attorney, Sacramento County
901 "G" Street
Sacramento, CA 95814

District Attorney, San Benito County
419 Fourth Street, 2nd Floor
Hollister, CA 95023

District Attorney, San Bernardino County
316 N. Mountain View Avenue
San Bernardino, CA 92415-0004

District Attorney, San Diego County
330 West Broadway, Suite 1300
San Diego, CA 92101

District Attorney, San Francisco County
850 Bryant Street, Suite 322
San Francisco, CA 94103

District Attorney, San Joaquin County
222 E. Weber Ave. Rm. 202
Stockton, CA 95202

District Attorney, San Luis Obispo County
1035 Palm St, Room 450
San Luis Obispo, CA 93408

District Attorney, San Mateo County
400 County Ctr., 3rd Floor
Redwood City, CA 94063

District Attorney, Santa Barbara County
1112 Santa Barbara Street
Santa Barbara, CA 93101

District Attorney, Santa Clara County
70 West Hedding Street
San Jose, CA 95110

District Attorney, Santa Cruz County
701 Ocean Street, Room 200
Santa Cruz, CA 95060

District Attorney, Shasta County
1355 West Street
Redding, CA 96001

District Attorney, Sierra County
PO Box 457
Downieville, CA 95936

District Attorney, Siskiyou County
Post Office Box 986
Yreka, CA 96097

District Attorney, Solano County
675 Texas Street, Ste 4500
Fairfield, CA 94533

District Attorney, Sonoma County
600 Administration Drive, Room 212J
Santa Rosa, CA 95403

District Attorney, Stanislaus County
832 12th Street, Ste 300
Modesto, CA 95354

District Attorney, Sutter County
446 Second Street
Yuba City, CA 95991

District Attorney, Tehama County
Post Office Box 519
Red Bluff, CA 96080

District Attorney, Trinity County
Post Office Box 310
Weaverville, CA 96093

District Attorney, Tulare County
221 S. Mooney Blvd., Room 224
Visalia, CA 93291

District Attorney, Tuolumne County
423 N. Washington Street
Sonora, CA 95370

District Attorney, Ventura County
800 South Victoria Ave, Suite 314
Ventura, CA 93009

District Attorney, Yuba County
215 Fifth Street, Suite 152
Marysville, CA 95901

Los Angeles City Attorney's Office
City Hall East
200 N. Main Street, Suite 800
Los Angeles, CA 90012

San Diego City Attorney's Office
1200 3rd Avenue, Ste 1620
San Diego, CA 92101

San Francisco, City Attorney
City Hall, Room 234
1 Dr Carlton B Goodlett PL
San Francisco, CA 94102

San Jose City Attorney's Office
200 East Santa Clara Street,
16th Floor
San Jose, CA 95113